

REMARKS

Claims 1-6 are pending in the application. Claims 1-6 have been amended, and new Claims 7 and 8 have been added. No new matter has been added.

Reconsideration of the claims is respectfully requested.

Claims 1-2 and 4-5 have been rejected under U.S.C. §103(a) as being unpatentable over Hollemans et al. (US 2007/0036363) in view of Jacobs et al. (US Patent No. 5059958).

Claims 3 and 6 have been rejected under U.S.C. §103(a) as being unpatentable over Hollemans et al. (US 2007/0036363) in view of Jacobs et al. (US Patent No. 5059958) and further in view of Righter et al. (US Patent No. 5365935).

The Hollemens reference does not however appear to be citable as prior art. This document was published on 15 February 2007 with a PCT filing date of 1 September 2004. The sec 102(e) date is not shown on the document and it could be much later than 1 September 2004. The present application claims priority from 26 September 2003.

Hollemans does have an earlier priority date (not relevant for prior art purposes), namely 22 September 2003, but the technique in Hollemans was not published that day. As far as we can tell, earliest publication date of the technique in Hollemans is the publication of the PCT application, which was published 18 months after the priority date on 31 March 2005.

The Stefanik reference may be removeable as prior art by predating the filing date with the invention date. This option is being held in abeyance as it is not necessary to overcome the current rejection.

With the Hollemans reference removed, the sec. 103 rejection cannot be sustained. In addition to the insufficiency of the remaining references, the Righter

reference is directed to a wholly inapplicable field of use. We cannot see what the electro-cardiographic apparatus of Righter has to do with a headset comprising a gravitational sensor or how a person skilled in the art would know to use such art that is without the addition of further invention.

The Jacobs reference is to a tilt sensor for a game controller. There would never be a circumstance where the user would put it on his/her ear and wish to maintain the same function orientation of the buttons.

Claims 7 and 8 are similar in scope to existing claims but have been added to put the claims in a format more common to US practice.

Claims 2 and 8 further recite the star shaped configuration for the gravity sensor. This structure is clearly not shown in the prior art.

The star-shaped arrangement of the present invention has been created to provide optimum directional sensing. The technique in Righter discloses a usual ECG where three leads are placed on the Eindhoven triangle, and figure 1D in Righter is merely an illustration of a prior art apparatus. The object of Righter is to remove one of the three electrodes. It is unclear how a person skilled in the art could find inspiration in a document which states that it is not optimum with three electrodes and therefore removes one of them unless with hindsight, the present invention is known.

In the standard Eindhoven triangle, the electrodes are merely placed on the corners of an inverse triangle placed around the heart. The three locations have proved an effective way measuring the heart signals. The Eindhoven triangle is furthermore, not a star-shaped arrangement provided to locate the direction of an object.

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims. If the claims are not found

allowable in the next action, it should NOT be made final as the previously submitted basis for rejection contains a reference which is not prior art.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (612) 436-3152.

Respectfully submitted,

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